

SEP 13 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISRAEL GOMEZ-ALVAREZ,

Defendant - Appellant.

No. 05-10632

D.C. No. CR-04-02375-FRZ/HCE

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted September 11, 2006^{**}
San Francisco, California

Before: FERNANDEZ, W. FLETCHER, and RAWLINSON, Circuit Judges.

The parties agree that the crime of false imprisonment under Cal. Penal Code § 236 is not a categorical crime of violence under U.S.S.G. § 2L1.2(b)(1)(A)(ii). *See United States v. Hernandez-Hernandez*, 431 F.3d 1212,

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1217 n.5 (9th Cir. 2005). Therefore, the district court plainly erred in relying solely on the facts recited in the presentence report to determine that Gomez-Alvarez's conviction for false imprisonment under Cal. Penal Code § 236 constituted a crime of violence, rather than using the modified categorical approach articulated in *Taylor v. United States*, 495 U.S. 575, 602 (1990). See *Hernandez-Hernandez*, 431 F.3d at 1217.

Because “there is a plausible prospect that [Gomez-Alvarez's sentence] might have been different” had the district court engaged in a . . . modified categorical analysis to determine whether his false imprisonment conviction constituted a crime of violence, we vacate Gomez-Alvarez's sentence and remand for resentencing on an open record. See *United States v. Pimentel-Flores*, 339 F.3d 959, 968-69 (9th Cir. 2003).

SENTENCE VACATED AND REMANDED FOR RESENTENCING.